

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No 191 of 1996

in

COMPANY PETITION No 79 of 1982

RAMESH BHAGWATI

Versus

O.L. OF BANSIDHAR SPG. & WVG.

Appearance:

MR TR MISHRA for Petitioner

OFFICIAL LIQUIDATOR for Respondent No. 1

RM DESAI for Respondent no.3

CORAM : MR.JUSTICE A.R.DAVE

Date of Order:23/10/96

ORAL ORDER

The applicant has taken out Judge's Summons with a prayer that he should be paid salary for the period commencing from May 1983 to September 1985. His case is that his service was terminated wrongfully by M/s Bansidhar Spg. & Wvg. Mills Ltd. (In Liquidation) and upon filing proceedings against the company, the Labour Court was pleased to direct the Company to reinstate the applicant with back wages. In the circumstances, the concerned Chartered Accountant has calculated the amount which the applicant would have got if he had been continued in service.

The applicant has, therefore, prayed that he should be paid salary as directed by the Labour Court.

According to the report submitted by the Official Liquidator, a sum of Rs. 23245-68 is due and payable to the applicant by the company as per calculation furnished to him by M/s Mahavir & Co., Chartered Accountants. It has been submitted by the Official Liquidator that other similarly situated workmen have not been paid the entire amount due and payable to them and, therefore, it would not be just and proper to make payment of the entire amount due and payable to the applicant.

Looking to the facts and circumstances of the case, it would be just and proper to direct the Official Liquidator to pay to the applicant the amount which other similarly situated workmen have been paid. In other words, the Official Liquidator will consider the applicant to be in service and will make payment to the applicant on the basis on which the other similarly situated workmen have already been paid.

Ld. Advocate Mr. Mishra appearing for the applicant submitted that by virtue of the award given by the Labour Court, the applicant has to get complete back wages and, therefore, without prejudice to his right to recover the amount payable to him under award of the Labour Court, the applicant would accept the amount which might be paid by the Official Liquidator to him.

The Official Liquidator is directed to calculate and make payment of the amount which might be ascertained by him as stated herein above as soon as possible.

It is directed that an equal sum of the amount should be paid to State Bank of India - secured creditor as State Bank of India is having first charge over the assets of the company.

If the Official Liquidator is not having sufficient cash or bank balance to make the above-referred payment, he is permitted to encash one of the Fixed Deposit Receipts even at a premature stage.

The applicant will be at liberty to take appropriate proceedings to recover the remaining amount due and payable to him in accordance with law.

Application is accordingly disposed of finally.

23.10.1996 [A.R. DAVE, J]

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